

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ADAM GARBER,)	
)	
Plaintiff)	
)	CIVIL ACTION FILE
vs.)	NO: 1:15-CV-00123-AT-JCF
)	
SHERIFF BUTCH CONWAY,)	
COL. DON PINKARD ,)	
)	
Defendants)	

**DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS PLAINTIFF'S
CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF**

Defendants Butch Conway and Don Pinkard (“defendants”) move the Court to dismiss plaintiff Adam Garber’s (“Garber”) claims for injunctive and declaratory relief, and notify the Court that Garber pled guilty on January 12, 2017 to second degree murder in his criminal case in the Superior Court of Gwinnett County.

After his plea, Garber was sentenced, and was transferred on January 26, 2017 out of the Gwinnett County Jail (“Jail”) to the Georgia Diagnostic and Classification Prison in Jackson, Georgia, where he will serve his sentence. See Declaration of Mark Thomas. Garber’s transfer moots his remaining claims for

injunctive and declaratory relief, which means that his entire case must be dismissed.¹ In support of their motion defendants show the following:

The relief sought by Garber in his complaint

Garber in his second amended complaint alleged First Amendment violations based on two Jail policies: 1) a newspaper ban and 2) requiring incoming mail, other than legal mail, to be on postcards, rather than in envelopes. Doc. 112, p.11 and p. 15. Garber seeks an injunction to stop defendants from enforcing these policies², and a declaratory judgment that defendants have violated his constitutional rights by creating and enforcing the policies. Doc. 112, p. 18.

Argument and citation of authority

“A case is moot when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief.” Jews for Jesus, Inc. v. Hillsborough County Aviation Authority, 162 F.3d 627, 629 (11th Cir. 1998). In the 11th Circuit, transfer or a release of a prisoner moots the prisoner's claims for injunctive and declaratory relief. Zatler v. Wainwright, 802 F.2d 397, 399 (11th Cir. 1986); McKinnon v. Talladega Cnty., 745 F.2d 1360, 1365 (11th Cir. 1984) (transfer to a different jail moots claim for declaratory and injunctive relief, but does not moot a damages claim).

¹ The court previously dismissed plaintiffs’ damages claims, because the court found that defendants were entitled to qualified immunity. Doc. 141

² The Jail now allows inmates to receive non-local newspapers.

Because Garber was transferred from the Jail on January 26, 2017, his injunctive and declaratory relief claims under § 1983 are moot; the Jail policies Garber challenged will not control or apply at whichever prison he serves his sentence. The court previously dismissed his damages claim. There are no claims remaining, and defendants move the court to dismiss Garber's complaint in its entirety.

Submitted this 27th day of January, 2017.

/s/Duane D. Pritchett
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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2017 I electronically filed DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS PLAINTIFF'S REMAINING CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF with the Clerk of Court using the CM/ECF system, which will automatically send electronic mail notification of such filing to the following counsel of record who are CM/ECF participants:

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This is to further certify that the foregoing document was prepared using 14 point Times New Roman Font.

This 27th day of January, 2017.

/s/Duane D. Pritchett

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